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STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
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WALTER E. WHITCOMB
COMMISSIONER

PERMIT

AFTER-THE-FACT

AMENDMENT A TO DEVELOPMENT PERMIT DP 4710

The staff of the Maine Land Use Planning Commission (hereinafter the Commission), after reviewing the application and supporting documents submitted by West Forks River House, LLC for After-the-Fact Amendment A to Development Permit DP 4710, finds the following facts:

1. Applicant: West Forks River House, LLC
Attn: Peter Dostie
PO Box 65
West Forks, Maine 04985
2. Date of Completed Application: October 9, 2015
3. Location of Proposal: West Forks Plantation, Somerset County
Taxation Plan 02, Lots 4 & 5
4. Zoning: (D-GN) General Development Subdistrict
5. Lot Size: 2 acres

Existing Conditions:

6. The applicant's site is currently developed with a 28 ft. x 60 ft. four bedroom lodge with an attached 12 ft. by 24 ft. deck, located approximately 90 feet from the Normal High Water Mark (NHWM) of the Dead River and a 24 ft. x 28 ft. two story garage with a one bedroom second story apartment located approximately 85 feet from the NHWM of the Dead River. The facility is accessed by an approximately 60 ft. long by 30 ft. wide driveway. The facility also has an approximately 80 ft. by 45 ft. gravel parking area located approximately 200 feet from the lodge. The site has approximately 600 ft. of frontage on Route 201 and approximately 600 ft. of shoreline on the Dead River. Approximately 660 square feet of the combined footprints for the lodge and the garage are located between 75 feet and 100 feet of the NHWM of the Dead River.

Background:

7. On July 6, 2002, the Land Use Regulation Commission (now known and hereinafter referred to as the Land Use Planning Commission or the Commission) issued a Part approval and Part Denial for Building Permit BP 11323. The Commission granted after-the-fact approval for the reconstruction of a 28 ft. by 60 ft. residential dwelling, which utilized an existing cesspool for wastewater disposal. The permittee was allowed to use the existing cesspool until it failed. A replacement system was designed

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with a leach bed located in front of an existing 24 ft. by 24 ft. garage. Condition #6 of Building Permit BP 11323 required the area designated for the future replacement system as described in the permit shall be reserved and not further developed. The Commission denied the after-the-fact request for approval of a 12 ft. by 24 ft. deck located on the riverfront side of the dwelling. The application package included a copy of the Subsurface Wastewater Disposal System Permit approved by the Local Plumbing Inspector on August 6, 2001. Based on a review of the file information, it appears that the cesspool was replaced with the approved replacement subsurface sewage disposal system in 2002, after the Building Permit was issued. The disposal field was located in the driveway in front of the garage.

8. On March 23, 2005, the Commission issued Development Permit DP 4710 for the conversion of a 28 ft. by 60 ft. dwelling approved pursuant to Building Permit BP 11323 to a commercial Bed and Breakfast lodging facility and it also gave after-the-fact permit approval for the previously denied attached 12 ft. by 24 ft. deck. The permit noted that a 24 ft. by 24 ft. garage existed as an accessory structure on the lot also. The permit failed to recognize the prior installation of the replacement subsurface sewage disposal system, which had been installed in 2002.
9. During the fall of 2005, the applicant demolished the existing 24 ft. by 24 ft. garage and reconstructed / expanded a new 24 ft. by 28 ft. garage with a residential apartment on the second floor without obtaining a permit from the Commission. The Commission's staff issued a Notice of Violation to the applicant for the unauthorized activities.
10. On October 20, 2005, the applicant submitted a permit application for the unauthorized 24 ft. by 28 ft. by 23 ft. tall garage with a second floor apartment. The application indicated that the apartment would generate additional waste water, but that additional waste water could be handled by the existing system.
11. On November 4, 2005, the Commission's staff returned the application submitted on October 20, 2005 as incomplete. The information and materials requested to complete the permit application included: Exhibit B "Before Site Plan", Exhibit C "After Site Plan", Exhibit F "HHE-200 Application for Subsurface Wastewater Disposal" and a \$975.00 After-the-Fact triple permit fee.
12. On February 2, 2015, staff from the Commission issued a Second Notice of Violation for the unauthorized reconstruction and expansion of the 24 ft. by 28 ft. two story garage with a second floor apartment.

Project Summary and Discussion

13. On October 9, 2015, the applicant re-submitted an After-the-Fact Permit application for a 24 ft. by 28 ft. two story garage with a second floor apartment. The applicant proposes to rent the apartment during the summer rafting season and reside in the apartment during the off season. The apartment will continue to utilize the existing subsurface sewage disposal system that is shared with the adjacent River House Lodge. Development Permit DP 4710 authorized a change in use from a residential dwelling (Building Permit BP 11323) to a commercial Bed & Breakfast, which was considered a Major Home Occupation at that time (Section 10.02, #93 and Section 10.27,N,2). The River House Lodge is currently a short term commercial rental operation, with rooms for rent individually or collectively as a lodge. During certain times of the year, the owner may reside on site. The gross floor area for the two story 28 ft. by 60 ft. Lodge and the two story 24 ft. by 28 ft. garage apartment is approximately 4,704 square feet. The lodge with garage apartment is operated as a commercial lodging facility, which was approved to offer food and beverages on premises when it was considered a commercial Bed &

Breakfast. The second floor apartment on top of the two story garage has been rented commercially as a part of the River House Lodge facility for approximately 10 years, beginning soon after it was reconstructed in the same location as the pre-Commission 24 ft. by 24 ft. garage. The River House Lodge is a commercial development that caters to seasonal recreational activities, such as rafting, fishing, snowmobiling and ATV trail riding. Surrounding development includes residential and similar commercial development.

Commission Review Criteria

14. Under the provisions of Section 10.11,B,6, of the Commission's Land Use Districts and Standards, to allow a structure to be either conforming or less non-conforming to a water body setback, the Commission may reduce the road setback to no less than 20 feet in the cases of reconstruction or relocation of legally existing structures.
15. Under the provisions of Section 10.11,C,1, of the Commission's Land Use Districts and Standards, a permit is required for expansion of a non-conforming structure. Expansions must meet the maximum combined footprint for all structures not meeting the water body setbacks. For structures greater than 75 feet but less than 100 feet from flowing waters draining greater than 50 square miles, the maximum combined footprint is 1,500 square feet. The maximum height of all structures shall be 25 feet, or existing structure height, whichever is greater.
16. Under the provisions of Section 10.11,C,2, of the Commission's Land Use Districts and Standards, a legally existing, non-conforming structure may be reconstructed or replaced with a permit, provided the structure was in regular active use within two years of removal and if the reconstruction or replacement involves expansion, the structure meets the requirements of Section C,1.
17. Under provisions of Section 10.21C,3,d(1)(b) of the Commission's Land Use Districts and Standards, Commercial uses having a gross floor area of more than 2,500 square feet may be allowed within General Development (D-GN) Subdistricts as special exceptions upon issuance of a permit from the Commission pursuant to Title 12 §685-B, and subject to the applicable requirements set forth in Sub-Chapter III, provided the applicant shows by substantial evidence that (a) the use can be buffered from those other uses within the Subdistrict with which it is incompatible; and (b) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan.
18. Under the provisions of Sub-Chapter III, Section 10.26, A, 2 of the Commission's Land Use Districts and Standards; the minimum lot size required for commercial, industrial, and other non-residential uses involving one or more buildings is 40,000 square feet.
19. Under the provisions of Sub-Chapter III, Section 10.26, D, 2 of the Commission's Land Use Districts and Standards; the minimum setbacks for commercial structures, including parking areas is 75 feet from the traveled portion of the nearest roadway and 25 feet from the side and rear property lines.
20. The facts are otherwise as represented in Amendment A to Development Permit application DP 4701, and supporting documents.

Based upon the above Findings, the staff concludes that:

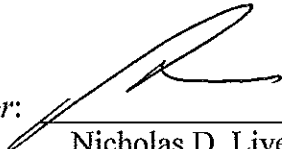
1. In accordance with Section 10.11,B,6, of the Commission's Land Use Districts and Standards, the 24 ft. by 28 ft. two story garage with second story apartment was reconstructed in the same location with the same nonconforming water body, road and property line commercial setbacks as the pre-Commission 24 ft. by 24 ft. garage. The location of the reconstructed footprint was no more non-conforming than the original footprint of the former legally existing pre-Commission structure.
2. In accordance with Sections 10.21C,3,d(1)(b) of the Commission's Land Use Districts and Standards, the commercial lodging facility, which now includes the formerly approved two story commercial Bed & Breakfast and the reconstructed two story garage with second floor apartment, is a use that is compatible with the surrounding residential and commercial uses within the Subdistrict. Therefore, it is an allowed use by Special Exception within the (D-GN) General Development Subdistrict.
3. In accordance with Sub-Chapter III, Section 10.26, A, 2 of the Commission's Land Use Districts and Standards, the property is greater than 2 acres, which exceeds the 40,000 square feet minimum lot size.
4. If carried out in compliance with the Conditions below, the proposal will meet the Criteria for Approval, section 685-B(4) of the Commission's Statutes, 12 M.R.S.A.

Therefore, the staff approves the application of West Forks River House, LLC with the following Conditions:

1. The permittee shall secure and comply with all applicable licenses, permits, authorizations, and requirements of all federal, state, and local agencies for the commercial operation of the River House Lodge, including but not limited to: Subsurface Wastewater Disposal System approval from the Local Plumbing Inspector and/or Maine Department of Health and Human Services, Subsurface Wastewater Program; the Maine Fire Marshal's Office; and the Maine Department of Health and Human Services, Division of Health Engineering, Eating and Lodging Program.
2. This After-the-Fact approval of the reconstructed and expanded 24 ft. by 28 ft. two story garage with second floor apartment resolves the Commission's Enforcement Case EC 06-10.
3. The conditions of Development Permit DP 4710 remain unchanged and inforce.

This permit is approved upon the proposal as set forth in the application and supporting documents except as modified in the above stated conditions, and remains valid only if the permittee complies with all of these conditions. Any variation from the application or the conditions of approval is subject to prior Commission review and approval. Any variation undertaken without Commission approval constitutes a violation of Land Use Planning Commission law. In addition, any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision.

DONE AND DATED AT GREENVILLE, MAINE, THIS TWENTYSEVENTH DAY OF OCTOBER, 2015.

for:  RODERICK J. FALLA
Nicholas D. Livesay, Executive Director